Supreme Court, U.S.
FILED
DEC 21 1985
JOSEPH F. SPANIOL, JR.
CLERK

85-1093

IN THE
Supreme Court of the United States
October Term, 1985

Shirley M. Ryniawec,

Appellant,

v.

THE HONORABLE CALLIE TSAPIS,
Judge of the Circuit Court of
Brooke County, et al,

Appellees.

JURISDICTIONAL STATEMENT FOR AN APPEAL FROM THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

*WILLIAM E. WATSON
MARC B. CHERNENKO

WILLIAM E. WATSON &
ASSOCIATES
800 Main Street
Wellsburg, West Virginia 26070

Attorneys for Appellant

**Counsel of Record*

QUESTIONS PRESENTED

I. Does the Soldiers and Sailors Civil Relief Act of 1940 prevent a Court from proceeding to order a non-emergency change of child custody when the custodial parent is in the military service of the United States and appears neither in person nor by counsel during the proceedings in which the change of custody has been granted.

LIST OF PARTIES TO THE PROCEEDING

Shirley M. Ryniawec

The Honorable Callie Tsapis, Judge of the Circuit Court of Brooke County

Connie Jean Ryniawec (Eddy)

TABLE OF CONTENTS

	Page
Questions Presented	i
List of Parties to the Proceeding	i
Table of Contents	ii
Table of Authorities	iii
Opinions Below	1
Jurisdictional Statement	1
Statutes Involved	2
Statement of the Facts and Case	4
Argument For the Allowance of the Appeal	6
Conclusion	9
Appendix A	1a
Appendix B	3a
Appendix C	4a
Appendix D	7a
Appendix E	11a

TABLE OF AUTHORITIES

Cases: Page

Boone v. Lightner, 319 U.S. 561, 87 L. Ed. 1587 (1943) 5

In Re Adoption of a Minor, 136 F.2d 790 (D.C. Cir. 1943) 6

Lackey v. Lackey, 278 S. E. 2d 811 (Va. 1981) 6, 7

Statutes:

Soldiers and Sailors Civil Relief Act of 1940

50 U.S.C.A. App. §511 (1981) 2

50 U.S.C.A. App. §521 (1981) 3, 5

IN THE
Supreme Court of the United States

October Term, 1985

No.

Shirley M. Ryniawec

Appellant,

v.

THE HONORABLE CALLIE TSAPIS,
Judge of the Circuit Court of
Brooke County, et al,

Appellees.

JURISDICTIONAL STATEMENT FOR AN APPEAL FROM THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

OPINIONS BELOW

There is an unpublished Order of the Supreme Court of Appeals of West Virginia entered on the 23rd day of September, 1985. Additionally, there is an unpublished Order of the Circuit Court of Brooke County, West Virginia entered on the 12th day of June, 1985.

JURISDICTIONAL STATEMENT

The Supreme Court of Appeals of West Virginia issued an Order denying your Appellant's Motion for a Writ of Prohibition on September 23, 1985, thereby permitting the Circuit Court of Brooke County, West Virginia to effect the change of custody of the infant child in this matter from the custodial parent, Michael Leroy Ryniawec, who is a

member of the United States Army and in the military service of the United States. Jurisdiction is invoked under Title 28 of the United States Code Section 1257(1).

STATUTES INVOLVED

The pertinent provisions of the Soldiers and Sailors Civil Relief Act of 1940 are found in 50 U.S.C.A. App. §501-591 (1981) and are as follows:

§*511 Definitions*

(1) The term "person in the military service", the term "persons in military service", and the term "persons in the military service of the United States", as used in this Act (sections 501 to 591 of this Appendix), shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps. the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term "military service", as used in this Act (said sections), shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service", as used in this Act (said sections), shall include the time between the following dates: For persons in active service at the date of the approval of this Act (Oct. 17, 1940) it shall begin with the date of approval of this Act (Oct. 17, 1940); for persons entering active service after the date of

this Act (Oct. 17, 1940), with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act (said sections) ceases to be in force.

(3) The term "person", when used in this Act (said sections) with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term "court", as used in this Act (said sections), shall include any court of competent jurisdiction of the United States or of any State, whether or not a court of record.

Oct. 17, 1940, c. 888, § 101, 54 Stat. 1179; Oct. 24, 1972, Pub.L. 92-540, Title V, § 504(1), 86 Stat. 1098.

§521 *Stay of proceedings where military service affects conduct thereof*

At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act (sections 501 to 591 of this Appendix), unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service.

Oct. 17, 1940, c. 888, § 201, 54 Stat. 1181.

STATEMENT OF THE FACTS AND CASE

Michael Leroy Ryniawec and Connie Jean Wagner were married in Brooke County, West Virginia, on December 5, 1980. They were subsequently granted a divorce by the Circuit Court of Brooke County, West Virginia by Order entered July 14, 1983. There was one child born of this marriage, namely, Angelina Marie Ryniawec, four years of age. Your Appellant, Shirley M. Ryniawec, is the mother of Michael Leroy Ryniawec and the paternal grandmother of Angelina Marie Ryniawec.

By Memorandum of Opinion entered on the 29th day of April, 1983, custody of the said infant child was awarded to Michael Leroy Ryniawec.

Some several months after receiving custody, Michael Ryniawec enlisted in the United States Army and was stationed in Darmstadt, West Germany. Angelina Marie Ryniawec remained in Brooke County, West Virginia with her paternal grandmother, the Appellant herein, whom the divorce court had in its April 29, 1983, Memorandum of Opinion, considered the person closest to filling the role of said child's mother.

On November 27, 1984, Connie Jean Ryniawec (Eddy), the Appellee herein, filed with the Circuit Court a Petition seeking modification of the Court's prior Order and custody of Angelina Marie. Despite having alleged in her verified Petition that Michael Leroy Ryniawec was in the United States Army and stationed overseas, she proceeded knowingly in the absence of the said serviceman, to attempt to seek custody. At a hearing conducted before the Circuit Court on December 27, 1984 your Appellant first appeared by counsel to advise the Court that Mrs. Eddy's allegations concerning the enlistment of Michael Ryniawec and his overseas assignment were correct and that the terms of the

Soldiers and Sailors Civil Relief Act of 1940 required that a stay be ordered due to the military absence of the custodial parent.

Thereafter, at a hearing conducted May 23, 1985, the Circuit Court again denied the Appellant's Motion for a stay due to Michael Leroy Ryniawec's military absence and proceeded in its June 12, 1985 Order to direct that custody be transferred from the absent serviceman father to the Appellee, Connie Jean Ryniawec (Eddy).

Your Appellant, having been granted intervenor status, thereafter proceeded to file with the Supreme Court of Appeals of West Virginia a Petition for a Writ of Prohibition based upon the Circuit Court's refusal to stay the child custody proceedings due to the military absence of Michael Leroy Ryniawec and its material adverse affect on his ability to participate in those proceedings and conduct his defense. The central issues presented in the Petition were as follows:

1. Whether the Circuit Court can proceed in child custody matters when the custodial parent is a person in the military service of the United States and appearing neither in person nor by counsel during those proceedings in which a change of child custody was granted.

2. Whether the Circuit Court can transfer custody of an infant child from a custodial parent who is a person in the military service of the United States without first finding that the soldier's absence does not materially affect his ability to conduct a defense or otherwise participate in the proceedings.

Although a Rule to Show Cause was initially issued, the Supreme Court of Appeals of West Virginia denied your Appellant's Motion for Writ of Prohibition, by Order dated September 23, 1985. Thereafter, by Order entered

October 8, 1985, the Supreme Court of Appeals stated the operation of its former Order until January 1, 1986 for the purposes of permitting your Appellant to proceed before this Honorable Court.

ARGUMENT FOR THE ALLOWANCE OF THE APPEAL

The Congress of the United States in 1940 enacted the provisions of the Soldiers and Sailors Civil Relief Act as a means of protecting members of the United States military in order to permit them to devote their entire energy and attention to the needs of our country and to permit a suspension of legal proceedings against them which may arise during the time in which they are so serving. The need for this protection is as evident now as it was more than forty years ago. The Congress realized that an absence from one's home because of military obligations could result in great prejudice to one's rights if legal proceedings were conducted and the serviceman was unable to personally participate. Therefore, the Act permitted that

> "At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as a plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this act, unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service."
> 50 U.S.C.A. App. §521 (1981)

This Honorable Court recognized the great potential for

harm associated with legal proceedings conducted in a serviceman's absence in ***Boone v. Lightner,*** 319 U.S. 561, 87 L. Ed. 1587 (1943). In ***Boone,*** this court stated that

> "The Soldiers' and Sailors' Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation. The discretion that is vested in trial courts to that end is not to be withheld on nice calculations as to whether prejudice may result from absence, or absence result from the service. Absence when one's rights or liabilities are being adjudged is usually prima facie prejudicial." 319 U.S. at 575, 87 L. Ed. at 1596

In the instant case, the Circuit Court of Brooke County, West Virginia refused to comply with the terms of the Act as it gave no consideration to and made no findings as to the effects of Michael Leroy Ryniawec's military absence on his ability to participate and defend the child custody modification petition filed by Appellee Eddy. It is the same absence which this Honorable Court considered as "usually prima facie prejudicial" which the Circuit Court chose to disregard entirely.

In the instant case, the Circuit Court abused its discretion in refusing to consider the prejudicial effects of the military absence on the custodial parent from whom custody was taken. However, the terms of the Act placed upon the Circuit Court the affirmative duty to make a determination as to whether or not the military absence had any adverse effect. This duty on the part of the Circuit Court to protect the serviceman was recognized by the United States Court of Appeals for the District of Columbia as it referenced the stay provisions of the Act and held

> "This language made it the duty of the trial judge

to inquire, and find, whether or not the ability of appellant, in the present case, to conduct his defense, was materially affected by reason of his military service." ***In Re Adoption of a Minor,*** 136 F.2d 790, 792 (D.C. Cir. 1943).

Moreover, facts such as those presented in the instant case are not new to the state courts. In ***Lackey v. Lackey,*** 278 S. E. 2d 811 (Va. 1981), the Virginia court addressed a factual situation much like that presented herein. In ***Lackey,*** the parties were granted a divorce and custody of an infant child was granted to the husband. At the time of his enlisting in the United States Navy, Mr. Lackey transferred both physical possession as well as custody of the infant child to his parents. In order to further memorialize this transfer, it was formally granted by the Court. Approximately one year later, the ex-wife petitioned the Court for custody, seeking a transfer from her former in-laws. Then, despite the fact that custody was vested in his parents, the serviceman sought a stay of the proceedings based upon his inability to attend due to his military commitments onboard ship. The Virginia court determined that a stay was proper as it held

"His inability to be present and to participate in his defense undoubtedly affected his ability to defend Mrs. Lackey's petition for a permanent change in custody." 278 S. E. 2d at 812.

The facts in the instant case are much the same as in ***Lackey,*** as the custodial parent is now abroad serving in the United States Army and your Appellant has physical custody of the infant child. In ***Lackey,*** it was the serviceman who requested and was granted a stay based upon the Soldiers and Sailors Civil Relief Act of 1940, in the instant case it was your Appellant who, for the same reasons as Mr. Lackey, moved for and was denied such relief.

While in ***Lackey,*** the Court concluded the husband's inability to attend prejudiced his rights to participate in the proceedings affecting the custody of his child, in the instant case the Appellee Circuit Court made no determination as to the affects of Michael Leroy Ryniawec's absence and instead chose to abuse its discretion and denied the requested stay.

It must be noted that at no point in the lower proceedings or in the Petition which precipitated them was any contention made that the desired custody transfer was based upon some type of emergency affecting the health and welfare of Angelina Marie Ryniawec. The desired transfer had no such basis and the Circuit Court at one point during the May 23, 1985 hearing commended the Appellant for her willingness to raise the infant child and for her success in doing so. Therefore, it cannot be said that the granting of the custody change was based upon the need to effect some type of emergency protection or relief.

Given that, the lower Court disregarded the provisions of the Soldiers and Sailors Relief Act of 1940 in refusing to stay those child custody proceedings despite the fact that the serviceman from whom custody was taken was unable to attend and despite the fact that the Court chose not to make any determinations as to those patently adverse affects upon Michael Leroy Ryniawec caused by his being in West Germany, serving in the United States Army, your Appellant would assert that the Circuit Court's actions were both in violation of and in disregard of federal law.

CONCLUSION

For these reasons stated hereinabove, and for those reasons which are apparent in the record in these proceedings, your Appellant, Shirley M. Ryniawec, respect-

fully requests this Honorable Court grant an appeal in this matter.

Respectfully submitted,

*WILLIAM E. WATSON
MARC B. CHERNENKO

WILLIAM E. WATSON & ASSOCIATES
800 Main Street
Wellsburg, West Virginia 26070
(304) 737-0881

ATTORNEYS FOR APPELLANT

*COUNSEL OF RECORD

APPENDIX

APPENDIX A

STATE OF WEST VIRGINIA

At a Regular term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 23 day of September, 1985, the following order was made and entered, to-wit:

Neely, Justice:

Shirley M. Ryniawec,
Petitioner,
No. 16768
v.
The Honorable Callie Tsapis, Judge of the Circuit Court of Brooke County, West Virginia, and Connie Jean Ryniawec (Eddy), Respondents.

This original proceeding in prohibition is before this Court upon the petition of Shirley M. Ryniawec. The petitioner asserts that the respondent Connie Jean Ryniawec should be prohibited from further proceeding with her petition in the Circuit Court of Brooke County which seeks to modify the circuit court's previous order awarding permanent custody of three-year-old Angelina Marie Ryniawec to Shirley M. Ryniawec's son, Michael Leroy Ryniawec.

After reviewing all matters of record, the briefs and argument of counsel, we hold that the circuit court did not abuse its discretion when it refused to stay the respondent's petition to modify the circuit court's previous order of permanent custody. Even though Michael Leroy Ryniawec is currently a private in the U.S. Army, the Soldier's and Sailor's Civil Relief Act of 1940, 50 U.S.C.A. App.

§520-523 (1981), does not prohibit the circuit court from proceeding in this case. Rather, it is within the circuit court's discretion to hear the respondent's custody petition.

The petitioner, Shirley M. Ryniawec, is entitled to no relief upon her petition, and it is hereby ADJUDGED, ORDERED AND DECREED that the rule to show cause previously issued by this Court is discharged and the Shirley M. Ryniawec's petition for a writ of prohibition denied.

A True Copy

Attest:

Clerk Supreme Court of Appeals

APPENDIX B

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 8th day of October, 1985, the following order was made and entered, to-wit:

Shirley M. Ryniawec, Petitioner
16768
vs.
Honorable Callie Tsapis, Judge of the Circuit Court of Brooke County, West Virginia, and Connie Jean Ryniawec (Eddy), Respondents

On a former day, to-wit, October 7, 1985, came Shirley M. Ryniawec, by Marc B. Chernenko, her attorney, and presented to the Court her motion in writing to stay the execution of the judgment of this Court entered on September 23, 1985, until January 1, 1986 to permit an application to the Supreme Court of the United States for an appeal or writ of certiorari to the judgment of this court.

Upon consideration whereof the Court is of opinion to and doth grant said motion. It is therefore considered and ordered that the execution of the judgment entered on September 23, 1985, be suspended for a period of ninety days in order to permit the aforesaid petitioner to apply to the Supreme Court of the United States for an appeal or writ of certiorari; which is ordered to be certified to the Circuirt Court of Brooke County, West Virginia.

A True Copy

Attest: _____
Clerk Supreme Court of Appeals

APPENDIX C

IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA

MICHAEL LEROY RYNIAWEC,
Plaintiff,
vs.
CONNIE JEAN RYNIAWEC (EDDY)
Defendant.
CIVIL ACTION NO. 82-C-294-Ts

ORDER

On the 23rd day of May, 1985, came CONNIE JEAN RYNIAWEC (EDDY), in person, and by her Attorney, Paul T. Camilletti, and as well came Shirley Ryniawec, the person who has actual physical custody of and the paternal grandmother of the infant child of the parties hereto, Angelina Marie Ryniawec, in person, and with her Attorney, Marc B. Chernenko; MICHAEL LEROY RYNIAWEC, the Plaintiff herein, appearing neither in person, by pleading, counsel or otherwise, this date having been set by the Court for a status conference in the above-referenced matter.

WHEREUPON, counsel for Shirley Ryniawec reiterated his previous objection to these proceedings based upon the federal Soldiers and Sailors Civil Relief Act due to the fact that the Plaintiff, Michael Leroy Ryniawec, continues to be a member of the US Army stationed in Darmstadt, West Germany, and he is unable to attend these proceedings nor has he received personal service in this matter.

THEREAFTER, the Court did advise the parties that she had received the report of Delbert Bonar, caseworker for the Belmont County, Ohio, Department of Welfare, regarding his homestudy investigation of the home of Connie and Anthony Wayne Eddy, 4746 Noble Street, Bellaire, Ohio. The Court further advised the parties that although she had not yet received a similar report from the State of Maryland Department of Welfare, it was her intention to proceed in this matter.

WHEREUPON, the Court did find, based upon the above-referenced homestudy investigation, that the circumstances of Connie Eddy have changed and that it would be in the best interest of the infant child of the parties hereto, Angelina Marie Ryniawec, to have custody placed with her mother, Mrs. Connie Eddy, the Petitioner herein, and to be removed from the custody of her father, Michael Leroy Ryniawec, under physical custody of her paternal grandmother, Shirley Ryniawec.

WHEREUPON, Counsel for Shirley Ryniawec did state his objection to the Court's consideration of said homestudy investigation due to the fact that Delbert Bonar, the person purporting to have submitted said report, is not present in Court and subject to examination by the parties.

WHEREUPON, Counsel for Shirley Ryniawec objected to the change of custody and requested a stay of said change for the purposes of filing a Writ or Petition with the Supreme Court of Appeals of West Virginia with respect to this Order in these proceedings.

ACCORDINGLY, after considering the Petition previously filed by Connie Jean Ryniawec (Eddy) and the arguments of counsel, the Court does

ORDER that temporary custody of the infant child of the parties hereto, Angelina Marie Ryniawec, is hereby ordered placed with her mother, Connie Jean Ryniawec (Eddy) 4746 Noble Street, Bellaire, Ohio, and therefore, the previous Order of this Court in which custody of the infant child of the parties hereto was granted to Michael Leroy Ryniawec, the Plaintiff; is hereby modified; and it is further

ORDERED that during such temporary custodial placement, Mrs. Shirley Ryniawec, the paternal grandmother of Angelina Marie Ryniawec, shall enjoy visitation with Angelina every other weekend. It is further

ORDERED that this custody Order is and shall be stayed for a period of two weeks from the date of entry of this Order so as to afford counsel an opportunity to petition the West Virginia Supreme Court of Appeals, and it is further

ORDERED that during the pendency of the stay of this Order, Connie Jean Ryniawec (Eddy) shall enjoy visitation with Angelina Marie Ryniawec each week from Thursday, at 2:00 p.m., to Saturday, at 5:00 p.m.

The objection of counsel for Shirley Ryniawec to the continuation of these proceedings based upon the federal Soldiers and Sailors Civil Relief Act as well as the objection to the Court's consideration of the above-referenced homestudy investigation and the granting of tempoary custody to Mrs. Eddy are both hereby noted; and the objection of counsel for Mrs. Eddy to the stay of this Order is also hereby noted.

ENTER this 12th day of June, 1985.

/s/ Callie Tsapis

CALLIE TSAPIS, Circuit Judge

APPENDIX D

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

NO.

SHIRLEY M. RYNIAWEC,

Appellant,

v.

THE HONORABLE CALLIE TSAPIS,
Judge of the Circuit Court of
Brooke County, et al,

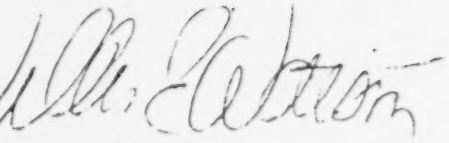
Appellees.

NOTICE OF APPEAL
FROM THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Your Petitioner, Shirley M. Ryniawec, by counsel, pursuant to the Rules of the United States Supreme Court, hereby respectfully represents that she is appealing from that Judgment Order of the Supreme Court of Appeals of West Virginia dated the 23rd day of September, 1985, in which your Appellant's Petition for a Writ of Prohibition was denied.

Your Appellant further states that her appeal is being taken pursuant to Title 28 of the United States Code Section 1257(1).

Respectfully submitted,

BY: 

WILLIAM E. WATSON

Of Counsel for Appellant

WILLIAM E. WATSON
MARC B. CHERNENKO
WILLIAM E. WATSON & ASSOCIATES
800 Main Street
Wellsburg, West Virginia 26070

COUNSEL FOR APPELLANT

AFFIDAVIT OF CERTIFICATE OF SERVICE

STATE OF WEST VIRGINIA,

COUNTY OF BROOKE, to-wit:

On the 16th day of December, 1985, personally appeared before me, a Notary Public, MARC B. CHERNENKO, who after first being duly sworn, doth depose and say as follows:

That he served upon the following the Notice of Appeal from the Supreme Court of Appeals of West Virginia, by first class United States mail, postage prepaid, on this 16th day of December, 1985:

The Honorable Callie Tsapis
c/o David B. Cross, Esq.
Prosecuting Attorney for
Brooke County
67 Seventh Street
Wellsburg, WV 26070

The Honorable Callie Tsapis
c/o Brooke County Courthouse
Seventh Street
Wellsburg, WV 26070

Clerk
Circuit Court of Brooke County
Brooke County Courthouse
Seventh Street
Wellsburg, WV 26070; and

Connie Jean Ryniawec (Eddy)
c/o Paul T. Camilletti, Esq.
30 Twelfth Street
Wheeling, WV 26003.

And further your Affiant sayeth not.

MARC B. CHERNENKO

TAKEN, sworn to and subscribed before me this 16th day of December, 1985.

My commission expires: February 8, 1995.

NOTARY PUBLIC

APPENDIX E

IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA

MICHAEL LEROY RYNIAWEC,
Plaintiff,
vs.
CONNIE JEAN RYNIAWEC,
Defendant
Civil Action No. 82-C-294Ts

PETITION

Comes now your Petitioner, CONNIE JEAN EDDY, and states as follows:

1. That your Petitioner, CONNIE JEAN EDDY, is the same person as CONNIE JEAN RYNIAWEC, Defendant in the above styled divorce action.

2. That by Order entered on the 14th day of July, 1983, this Court granted the parties hereto a Divorce and provided at paragraph 2 thereof that the Plaintiff, MICHAEL LEROY RYNIAWEC, "is a fit and proper person to have the care, custody and control of the minor child as long as he is living at his mother's home; in the event he leaves his mother's home, the Court will review his circumstances at that time before continuing custody with him.

3. This Order also provided at paragraph 3 that the Defendant, CONNIE JEAN RYNIAWEC, your Petitioner herein, shall be entitled to reasonable rights of visitation with the infant child subject to giving the Plaintiff 24-hours notice of her intent to exercise her visitation rights.

4. It is your Petitioner's information that her child, Angelina Marie Ryniawec, aged 3 years, is present residing at the home of Shirley Ryniawec, the mother of MICHAEL LEROY RYNIAWEC, which is located at Apple Pie Ridge, West Liberty, Brooke County, West Virginia.

5. Your Petitioner has been unable to arrange visitation with her child since April of 1984.

6. Your Petitioner is advised and therefore states that MICHAEL LEROY RYNIAWEC no longer resides at his mother's home on Apple Pie Ridge, West Liberty, Brooke County, West Virginia, but is presently in the service of the United States Army and she believes that he is stationed overseas.

7. Since said divorce, your Petitioner has remarried. Her husband's name is Anthony Eddy. Petitioner and her husband reside at 1601 Fountain Green Road, Bel Air, Maryland 21014.

8. Petitioner is not employed. She can devote her time to rearing and caring for her minor child. Her husband, Anthony Eddy, is employed by Lupton Home Improvement Co., Inc., 544 S. Rolling Road, Baltimore, Maryland 21228, as a carpenter.

9. Mr. James Lee, Probation Officer of this Court, investigated the parties in order to assist the Court in deciding the issue of custody of the child, Angelina Marie Ryniawec; he reluctantly recommended that the child be placed in the custody of her father, because it appeared that her father's family could provide a better environment than could Petitioner at that time.

10. Since that time there has been a vast change in circumstances both of the Petitioner and the Respondent, MICHAEL LEROY RYNIAWEC; so much so that it is

now in the best interest of the child, ANGELINA MARIE RYNIAWEC, that she be placed in the custody, care and control of her mother, CONNIE JEAN EDDY.

WHEREFORE, your Petitioner, CONNIE JEAN EDDY, respectfully prays: that due process issue; that a copy of this Petition and Notice of Hearing thereon be served upon MICHAEL LEROY RYNIAWEC and also upon Shirley Ryniawec who has actual physical custody of the child, Angelina Marie Ryniawec; and that at a Hearing upon the matters raised herein, your Petitioner, CONNIE JEAN EDDY, be granted custody of her daughter, Angelina Marie Ryniawic; and for such other and further relief as to the Court may seem proper.

Respectfully submitted,

CONNIE JEAN EDDY

BY Paul T Camilletti
Counsel

Counsel for Petitioner:
Paul T. Camilletti, Esquire
CAMILLETTI AND SACCO
30 Twelfth Street
Wheeling, West Virginia 26003
Phone: (304) 233-2541

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO-WIT:

CONNIE JEAN EDDY, Petitioner, being first duly sworn, says that the facts and allegations contained in the foregoing PETITION are true, except so far as they are therein stated to be upon belief, in which case, she believes them to be true.

Connie Jean Eddy

CONNIE JEAN EDDY

Taken, subscribed and sworn to before me this 23rd day of November, 1984.

Paul T Camillotti

Notary Public of, in and for
Ohio County, West Virginia

My Commission Expires:
June 6, 1988

Supreme Court, U.S.
FILED
MAR 28 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-1093

IN THE

Supreme Court of the United States

October Term, 1985

Shirley M. Ryniawec,

Appellant,

v.

THE HONORABLE CALLIE TSAPIS,
Judge of the Circuit Court of
Brooke County, et al,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

MOTION TO DISMISS THE APPEAL AND TO AFFIRM THE RULING OF THE WEST VIRGINIA SUPREME COURT OF APPEALS

PAUL T. CAMILLETTI

CAMILLETTI AND SACCO
30 Twelfth Street
Wheeling, West Virginia 26003
304-233-2541

Attorney For Appellee

42pp

TABLE OF CONTENTS

Page

Table of Authorities..... ii

Statement of Facts and Case..... 1

Argument in Support of Motion to Dismiss Appeal and Affirm the Lower Court's Ruling..... 6

Conclusion..... 12

Appendix A..... 1a

Appendix B..... 5a

Appendix C..... 9a

Appendix D..... 21a

Appendix E..... 24a

TABLE OF AUTHORITIES

Cases: Page

Boone v. Lightner, 319 U.S. 561, 87 L.Ed. 1587 63 SCt 1226 (1947).. 7,8

Hammack v. Wise, 158 W.V. 343, 211 SE2d 118 (1975)..... 8

Lackey v. Lackey, 278 SE2d 811 (Va. 1981)..... 9

Statutes:

Soldiers and Sailors Civil Relief Act of 1940.....
50 U.S.C. App.§521..... 6
50 U.S.C. App.§524..... 6
W.Va. Code §48-2-15(e)..... 8

NO. 85-1093

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

SHIRLEY M. RYNIAWEC,

Appellant,

vs.

HONORABLE CALLIE TSAPIS,
Judge of the Circuit Court
of Brooke County, and CONNIE
JEAN RYNIAWEC (EDDY),

Appellees.

MOTION TO DISMISS THE APPEAL
AND TO AFFIRM THE RULING OF THE
WEST VIRGINIA SUPREME COURT OF APPEALS

STATEMENT OF FACTS AND CASE

This Motion is brought on behalf of CONNIE JEAN RYNIAWEC (EDDY), who seeks custody of her infant child from Appellant, the child's paternal grandmother. Appellant was served with Notice of the original Petition for custody as Custodian of the child.

Appellant has since requested and been granted Intervenor status in this matter. The Serviceman, Michael Leroy Ryniawec, is the father of the child who is the subject of this custody proceeding and was Plaintiff in the original divorce action.

The Final Decree divorcing the Serviceman and Appellee was entered on July 14, 1983, in Brooke County, West Virginia. This was prior to the Serviceman's enlistment in the Armed Forces. The Divorce Decree provided, in part,

> "The Plaintiff [Michael Leroy Ryniawec] is a fit and proper person to have the care, custody, and control of the minor child as long as he is living at his mother's home; in the event he leaves his mother's home, the Court will review his circumstances at that time before continuing custody with him;"

Appellee filed her Petition seeking custody of her child on November 27,

1984, in the Circuit Court of Brooke County, West Virginia. Service was accomplished on the Serviceman by mailing copies of the Petition and Notice of Hearing to his Attorney of Record and to his last known address. The issue of the Stay of Proceedings provided in 50 U.S.C. App. §521 was immediately addressed by the Circuit Court of Brooke County, West Virginia, which had Counsel brief the question, and then issued its Memorandum of Opinion, dated January 18, 1985, stating in part

> "The Plaintiff, by Counsel, seeks a Stay of these Proceedings under the provisions of the Soldiers and Sailors Civil Relief Act. We have been given no information as to whether or not the Plaintiff can obtain leave to participate in a Hearing. The case goes beyond the parental rights of custody of their child. The child's rights and best interest must also be considered by the Court. This Court is of the

opinion that permanent custody should not be litigated at this time in the absence of the father. However, the Court will consider a temporary custody arrangement as between the paternal grandparents of the child and the mother.

"The Plaintiff knew that custody was granted to him only while he lived with his parents; he chose to join the Service in spite of that provision. This Court has a right to consider who should have custody of the child while he is in the Service. The Court is of the opinion that a Stay of these Proceedings should be denied and will schedule a Hearing regarding the fitness of the mother to have custody and what the best interests of the child dictates as to temporary custody while the father is in the Armed Services and cannot have the child with him. Plaintiff will therefore not be denied his right to permanent custody should he petition this Court for custody."

By Order entered June 12, 1985, the Circuit Court of Brooke County did

"Order that temporary custody of the infant child of the parties hereto, Angelina Marie Ryniawec, is hereby Ordered placed with her mother, Connie

> Jean Ryniawec (Eddy), 4746 Noble Street, Bellaire, Ohio, and therefore the previous Order of this Court in which custody of the infant child of the parties hereto was granted to Michael Leroy Ryniawec, the Plaintiff, is hereby modified..."

Moreover, the Serviceman has been in Brooke County, West Virginia, off and on, since September 2, 1985, in order to face unrelated criminal proceedings, and remains in Brooke County, West Virginia, to this day.

This proceeding has been active for sixteen (16) months and there has been no appearance by the Serviceman by pleading, by Counsel, in person, or otherwise. The Court therefore has no information that the Serviceman is attempting to obtain Leave to appear in Brooke County in this proceeding; that the Serviceman will be in Brooke County at or after a certain time in order to appear in this proceeding; or that there is any

termination date to the Stay requested.

Finally the Stay requested has been made by the Serviceman's mother and it would appear that she has adequately protected the Serviceman's interests in this regard.

ARGUMENT UPON THE MOTION TO DISMISS THE APPEAL AND TO AFFIRM THE DECISION OF THE WEST VIRGINIA SUPREME COURT OF APPEALS

It is Appellee's position that the Soldiers and Sailors Civil Relief Act, 50 U.S.C. App. §521, is not properly invoked; that the lower Court considered whether the fact of military service materially affected the Serviceman's ability to defend this action and determined that it did not; and that the Circuit Court is free to proceed against the Appellant under 50 U.S.C., App. §524, without affecting the rights of the Serviceman, which was done.

This child custody proceeding is between Appellant, Grandmother, and Appellee, Mother. The Serviceman's property rights are not impaired; no one seeks a money judgment against him, support has not been requested. The Serviceman is a party to this action as an administrative convenience only so that the case can be identified.

The Appellant seeks to interpose the Stay provided by the Soldiers and Sailors Civil Relief Act in order to avoid the Circuit Court's original Divorce Order. The judicial discretion conferred on the trial Court regarding the Stay of Proceedings was the very heart of the policy of the act. Boone v. Lightner, 319, US 561, 63 SCt 1223, 87 L. Ed. 1587 (1943). In denying the Serviceman's request for a Stay, this Court noted that absence [of the Serviceman] may be a policy instead of a result

of military service, and discretion is vested in Courts to see that the immunities of the Soldiers and Sailors Civil Relief Act are not put to such unworthy use. Boone v. Lightner, 63 SCt at 1231.

In this case a mother seeks custody of her child from the paternal grandmother. The father is absent. West Virginia Circuit Courts may address the custody of minor children and alter any custody Order "as the circumstances of the parents or other proper person or persons and the benefit of the children may require". §48-2-15(e), West Virginia Code. West Virginia also recognizes that a parent has a natural right to custody of her child, Hammack v. Wise, 158 WV 343, 211 SE2d 118 (1975).

The Serviceman was present at his divorce proceeding and was aware of the Court's divorce decree. The Serviceman knew that upon enlistment he triggered

the mother's custody request. When granting the mother temporary custody, the Court acknowledged the importance of the Stay provided by the Soldiers and Sailors Civil Relief Act; as well as the right to proceed against other defendants not in the service; the fact that the Serviceman did not have custody of his child by virtue of his absence; and the importance of the Serviceman's right to petition for custody upon his return to Brooke County, West Virginia.

Lackey v. Lackey, 278 SE2d 811 (VA.1981), cited by Appellant, differs from the instant case in two important points. (1) Mr. Lackey obtained a Court Order transferring custody of his child to his parents while he was in the Service and overseas. In this case Mr. Ryniawec did not do this. (2) In Lackey, supra, a permanent change in

custody was requested. In this case, only a temporary custody award was granted pending the Serviceman's return and Petition.

The Circuit Court did not abuse its discretion and the Supreme Court of Appeals was correct in denying Appellant's request for a Rule in Prohibition because the Serviceman knew that the award of custody to him was conditional upon his remaining at home with his mother and yet he voluntarily enlisted in the Service, the Serviceman's rights have been fully protected by the Appellant, his mother, and the issue of the Stay provided by the Soldiers and Sailors Civil Relief Act has been addressed at each stage of these proceedings. The Serviceman has made no appearance in these proceedings in the sixteen months since the Petition has been filed, thus no Court knows the expected duration of

his service, whether he can obtain Leave, whether he has attempted to obtain Leave, nor when he will be in the area to appear in this proceeding. In fact, the Serviceman has been in the jurisdiction of the Circuit Court of Brooke County to face unrelated criminal charges and still has not appeared in this proceeding. Moreover, the Circuit Court specifically stated that it would not make an Order changing permanent custody but would only grant Appellee temporary custody. These circumstances demonstrate affirmatively that invocation of the Stay is dictated more by strategy than by the necessity of military service. The Circuit Court has considered the fact of military service and has ruled so that the Serviceman's rights are not materially affected. And the Circuit Court has found, consistent with West

Virginia Law, that the welfare of the child is paramount to any other issue.

CONCLUSION

For these reasons, Appellee respectfully requests that this Honorable Court dismiss the Petition for Appeal and affirm the Ruling of the West Virginia Supreme Court of Appeals permitting the Circuit Court of Brooke County, West Virginia, to consider Appellee's custody Petition.

Respectfully submitted,

PAUL T. CAMILLETTI

CAMILLETTI AND SACCO
30 Twelfth Street
Wheeling, West Virginia
26003
(304) 233-2541

ATTORNEY FOR APPELLEE

APPENDIX A

IN THE CIRCUIT COURT OF BROOKE COUNTY
WEST VIRGINIA

MICHAEL LEROY RYNIAWEC,

Plaintiff,

vs. CIVIL ACTION
NO. 82-C-294

CONNIE JEAN RYNIAWEC,

Defendant.

DIVORCE DECREE

On the 27th day of January, 1983, came the plaintiff, Michael Leroy Ryniawec, in person and by his attorney, Helen L. Jackson-Gillison, and as well came the defendant, in person and by her attorney, Kevin A. Stryker, pursuant to notice of hearing that this matter was to be brought on for final hearing.

WHEREUPON, in consideration of the attested Complaint alleging the existence of irreconcilable differences and an attested Answer admitting the existence of the same, and the testimony of the

parties, the Court was of the opinion that the plaintiff had met the grounds for the granting of a divorce based on the grounds of irreconcilable differences under the laws of the State of West Virginia;

WHEREFORE, it is ORDERED, ADJUDGED and DECREED that:

1) The plaintiff is awarded a divorce from the defendant based on the grounds of irreconcilable differences;

2) The plaintiff is a fit and proper person to have the care, custody and control of the minor child as long as he is living at his mother's home; in the event he leaves his mother's home the Court will review his circumstances at that time before continuing custody with him;

3) The defendant shall be entitled to reasonable rights of visitation with the infant child subject to giving the

plaintiff twenty-four (24) hours notice of her intent to exercise her visitation rights;

It is further ORDERED, ADJUDGED and DECREED that:

4) The defendant waives permanently any rights she may have to alimony from the plaintiff. It is understood by the defendant that a waiver of alimony at this point in time will bar her from ever receiving alimony from the plaintiff;

5) Both the plaintiff and defendant shall be enjoined and restrained from interfering or molesting each other in their personal liberties and affairs;

6) The plaintiff shall pay the defendant's counsel the sum of Seven Hundred Fifty Dollars ($750.00) within sixty (60) days.

There being nothing further to be done herein, it is ORDERED that this case be placed among the causes ended.

ENTER this 14th day of July. 1983.

Callie Tsapis
JUDGE CALLIE TSAPIS

APPROVED BY:

Helen L. Jackson-Gillison
HELEN L. JACKSON-GILLISON,
Counsel for Plaintiff

Kevin A. Stryker
KEVIN A. STRYKER,
Counsel for Defendant

Entered in Civil Order
Book # 29 Page 841-848
JUL 14, 1983
Betty S. Rockwell
Clerk Circuit Court

APPENDIX B

IN THE CIRCUIT COURT OF BROOKE COUNTY,
WEST VIRGINIA

MICHAEL LEROY RYNIAWEC,

Plaintiff,

vs. CIVIL ACTION
NO. 82-C-294

CONNIE JEAN RYNIAWEC,
(EDDY),

Defendant.

MEMORANDUM OF OPINION

The parties hereto were divorced on January 27, 1983 and custody of the minor child of the parties, after a contested hearing on the issue, was granted to the Plaintiff "as long as he is living at his mother's home; in the event he leaves his mother's home the Court will review his circumstances at that time before continuing custody with him;"

The Defendant has now filed a Petition seeking a change of custody on

the basis that the said Plaintiff is now in the armed forces stationed in Germany and also complaining therein that his parents, with whom the child is living, have made it difficult for her to exercise visitation rights and she has had none since April of 1984.

The Plaintiff, by counsel, seeks a stay of these proceedings under the provisions of the Soldiers and Sailors Relief Act. We have been given no information as to whether or not the Plaintiff can obtain leave to participate in a Hearing.

This case goes beyond the parental rights of custody of their child. The child's rights and best interest must also be considered by the Court. This Court is of the opinion that permanent custody should not be litigated at this time in the absence of the father. However, the Court will consider a temporary

custody arrangement as between the paternal grandparents of the child and the mother.

The Plaintiff knew that custody was granted to him only while he lived with his parents; he chose to join the service in spite of that provision. This Court has a right to consider who should have custody of the child while he is in the service.

The Court is of the opinion that a stay of these proceedings should be denied, and will schedule a hearing regarding the fitness of the mother to have custody and what the best interest of the child dictates as to temporary custody while the father is in the armed services and cannot have the child with him. Plaintiff will, therefore, not be denied his right to permanent custody should he Petition this Court for custody.

This action is, therefore, scheduled for hearing on the Petition on the issue of temporary custody and visitation on February 13, 1985, at 9:00 o'clock, a.m.

Counsel for the Defendant may accordingly prepare an Order.

Dated this 18th day of January, 1985.

_____

Judge

APPENDIX C

IN THE CIRCUIT COURT OF BROOKE COUNTY,
WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs. 84-F-118

MICHAEL RYNIAWEC,

Defendant.

JUDGMENT ORDER

On the 2nd day of December, 1985, came the State of West Virginia, by David B. Cross, Prosecuting Attorney for Brooke County, West Virginia, and as well came the Defendant, Michael Leroy Ryniawec, in person, and by Marc B. Chernenko, his Attorney. This matter having been set this date for trial, however, the Court was advised by counsel for the Defendant that a plea agreement had been reached as to the above-referenced indictment,

and proceeded to state the terms of the same on the record, said terms being as follows:

1. The Defendant will enter a plea of no contest to the misdemeanor charge of battery.

2. The Defendant will be sentenced to a one year term in the Brooke County jail, all of which would be suspended but seven days, for which he would be given credit, the Defendant having previously served that amount of time in the Brooke County jail and as well the Mount Holly, New Jersey jail.

3. The Defendant will serve two hundred fifty hours of community service work in a hospital at or near such military base as he may be stationed by the United States Army, which service work is to be approved by the probation officer of Brooke County.

4. That the Defendant pay restitution to the County Commission for those expenses incurred in his having been transported from Mount Holly, New Jersey to Brooke County, West Virginia, said restitution to be in an amount not to exceed Nine Hundred Forty-three Dollars Fourteen Cents ($943.14), and the particular amount to be determined through agreement of the Prosecuting Attorney and counsel for the Defendant inasmuch as certain questions were raised concerning the nature of certain of the specific expenses.

The Prosecuting Attorney then acknowledged that the terms of the plea agreement were as related by defense counsel.

The Court then proceeded to address the Defendant personally in open Court and advised him and determined that he understood the following:

1. The nature and elements of the charge of battery.

2. The Defendant's right to be represented by an attorney and the right to a court-appointed attorney in the event of indigency.

3. The right to plead not guilty, the right to a jury trial, the right to assistance of counsel during trial, the right to confront and cross-examine the witnesses against him, the right not to be compelled to incriminate himself, and the right to call witnesses on his behalf.

4. That if he pleads guilty, or nolo contendere, there will not be any further trial of any kind, so that by pleading guilty or nolo contendere, he waives the right to a trial on these charges.

5. That if he pleads guilty or nolo contendere, the Court may ask him questions about the events to which he

has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel, his answers, if untrue, may later be used against him and a prosecution for false swearing.

The Court, after determining that the plea is voluntary and not the result of force or threats or promises apart from the plea agreement or from his being under the influence of alcohol or drugs, inquired of the Defendant whether the willingness to plead nolo contendere resulted from prior discussions between the attorney for the State and defense counsel, and the Defendant replied in the affirmative.

The Court then inquired of the Defendant as to whether he was aware of and understood the terms of the plea agreement as recited by defense counsel and further inquired as to whether the Defendant was satisfied with the

representation of his interest in this matter by defense counsel, to both of which the Defendant replied in the affirmative.

After colloquy, the Court being satisfied that a plea could be entered by the Defendant, knowingly, intelligently, and voluntarily, the Court read the indictment to the Defendant and then called upon him to plead to the same regarding the lesser included misdemeanor offense of battery. Defendant then pleaded nolo contendere to the charge of battery, a lesser included offense of the indictment, and a misdemeanor.

After due consideration, it is further ORDERED that the Plea Agreement as related by defense counsel be accepted by the Court and the same be incorporated as the just judgment, sentence and disposition of the case. After determing that there is a factual basis for the plea,

it is then ORDERED and ADJUDGED that the Defendant, based upon his plea of nolo contendere, is convicted of the offense of battery, a misdemeanor, and it is further ORDERED and ADJUDGED as follows:

1. That the Defendant be sentenced to one year in the Brooke County jail, with all but the first seven days of said sentence being suspended, and further with the Defendant being given credit for the seven days having been previously served by him both in the State of West Virginia and as well the State of New Jersey.

2. The Defendant shall serve a period of probation for eighteen months and shall abide by all rules and regulations set by his probation officer who shall be James R. Lee, Chief Probation Officer of the First Judicial Circuit of West Virginia.

3. The Defendant shall serve two hundred fifty hours of community service

work at a hospital at or near that U.S. Army base at which the Defendant shall be stationed.

4. The Defendant shall provide written report upon request relating to his progress on the above community service work.

5. The Defendant shall make restitution to the Brooke County Commission of those expenses incurred by the County in transporting him from the State of New Jersey to Brooke County, said restitution being in an amount to be determined by agreement of counsel for the Defendant and as well the Prosecuting Attorney after review of all expenses submitted. In any event, the restitution shall have a maximum limit of Nine Hundred Forty-three Dollars Fourteen Cents ($943.14).

As further terms of the probation granted by the Court, it is ORDERED as

follows:

1. The Defendant shall not, during the term of his probation, violate any criminal law of this or any other state, or of the United States.

2. The Defendant shall not, during the term of his probation, leave the State without the consent of the Court which placed him on probation, however, in the event that the Defendant shall be stationed by the United States Army outside of this State or outside of the United States, this provision shall not apply.

3. The Defendant shall comply with the rules and regulations prescribed by the Court or by the Board of Probation and Parole, as the case may be, for his supervision by the probation officer.

4. The Defendant shall pay any fine assessed and the costs of the proceeding in such installments as the Court

may direct.

5. The Defendant shall not use or possess any controlled substances listed under the Uniform Controlled Substances Act of the West Virginia Code.

6. The Defendant shall not associate with any known or suspected drug users.

7. The Defendant is not permitted to use intoxicating beverages, liquors, beer, or to frequent places or establishments where either is sold, dispensed or used.

8. With the exception of any family member, the Defendant shall not associate with any person having a criminal record.

9. The Defendant shall be required to seek and maintain employment during the term of his probation.

10. The Defendant shall report immediately to the probation officer,

any change of employment, address, or telephone number.

11. The Defendant shall report to the probation officer one time per month on that form provided to him by the probation officer.

Curt Savage, the complaining witness herein, was present at the sentencing and indicated on the record that he concurred in the disposition of this case.

Accordingly, there being no further proceedings necessary in this matter, it is ORDERED that the bond previously posted by the Defendant be released and that this case be disposed of in accordance with this Order and the Defendant abide by the terms as set forth in this Order. It is further ORDERED that the Clerk transmit an attested copy of this Order to all counsel of record and as

well to James R. Lee, Chief Probation Officer for the First Judicial Circuit.

ENTER this 23d day of DECEMBER, 1985.

W. Craig Broadwater

W. CRAIG BROADWATER, Circuit Judge

APPROVED BY:

David B. Cross

DAVID B. CROSS
Prosecuting Attorney

Marc B. Chernenko

MARC B. CHERNENKO
Counsel for Defendant

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
Attest: Betty S. Rockwell
Clerk, Circuit Court
Brooke County, West Virginia
By: Glenda Brooks (Deputy)

Entered in Criminal Order
Book # 9 Page 732 - on 736
DEC 23, 1985
Betty S. Rockwell
Clerk Circuit Court, Brooke County

APPENDIX D

IN THE
SUPREME COURT OF THE UNITED STATES

SHIRLEY M. RYNIAWEC,

Appellant,

vs.

HONORABLE CALLIE TSAPIS,
Judge of the Circuit Court
of Brooke County, and
CONNIE JEAN RYNIAWEC (EDDY),

Appellees.

AFFIDAVIT

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO-WIT:

Affiant, after being duly sworn, deposes and says as follows:

1. My name is Connie Britt.

2. I am the mother of Respondent CONNIE JEAN RYNIAWEC (EDDY) and the grandmother of the child, Angelina Marie Ryniawec.

3. I am personally acquainted with

Michael Ryniawec, the father of Angelina.

4. I have seen Michael Ryniawec in Brooke County, West Virginia, in the months of November and December, 1985, and in January, 1986.

5. I usually see him on a Friday, Saturday, or Sunday.

6. On a Sunday in early December, 1985, he came to my home to pick up his daughter, my granddaughter, Angelina, after a visitation.

7. On Sunday, January 5, 1986, I telephoned the residence of Shirley M. Ryniawec; the phone was answered by Michael Ryniawec, and at that time we discussed the possibility of Angelina visiting with me.

Further Affiant saith not.

Connie Britt
CONNIE BRITT

Taken, sworn to and subscribed before me this 14th day of January, 1986.

1986.

Paul T Camilletti

Notary Public of, in and for
Ohio County, West Virginia

My Commission expires:

June 6 1988

APPENDIX E

IN THE
SUPREME COURT OF THE UNITED STATES

SHIRLEY M. RYNIAWEC,

Appellant,

vs.

HONORABLE CALLIE TSAPIS,
Judge of the Circuit Court
of Brooke County, and CONNIE
JEAN RYNIAWEC, (EDDY),

Appellees.

AFFIDAVIT

STATE OF WEST VIRGINIA

COUNTY OF BROOKE, TO-WIT:

Affiant, after being duly sworn, deposes and says as follows:

1. My name is James Lee. I am the Probation Officer for Brooke County, West Virginia.

2. One of my Probationers is Michael Ryniawec.

3. This Probationer, Michael Ryniawec, is the father of Angelina Marie

Ryniawec, and was formerly married to Connie Jean Ryniawec.

4. I am advised by Michael Ryniawec that he is a member of the Armed Forces serving with the United States Army.

5. According to records in the Circuit Court of Brooke County, West Virginia, in a case styled State of West Virginia vs. Michael Leroy Ryniawec, Case No. 84-F-118, the Prosecuting Attorney for Brooke County, West Virginia, requested that Michael Ryniawec be returned to Brooke County to face charges in the above referenced case.

6. Pursuant to that request, Michael Ryniawec was returned to Fort Dix, New Jersey, from whence he waived extradition to Brooke County, West Virginia.

7. According to records in his criminal case, Michael Ryniawec received his warrant in Brooke County, West

Virginia, on September 2, 1985, at which time he posted Bond.

8. Michael Ryniawec appeared in Circuit Court to receive his indictment on September 13, 1985. At that time he was represented by Attorney Marc B. Chernenko.

9. Pursuant to a Plea Agreement, Michael Ryniawec entered his Nolo Contendere Plea to the reduced charge of Battery on December 2, 1985.

10. On December 2, 1985, I interviewed Michael Ryniawec for the purpose of beginning his probation file. At that time he listed his home address as P. O. Box 207, West Liberty, West Virginia. I am advised by the Probationer that he is still in this Country. He must notify me before he returns to active duty in West Germany. I have not yet been notified of that event.

Furtner Affiant saith not.

James R. Lee
JAMES LEE

Taken, sworn to and subscribed before me this 17th day of March, 1986.

Grace Keener
Notary Public of, in and for
Brooke County, West Virginia

My Commission expires:

June 14, 1989